

Appl. No. 10/678,206  
Atty. Docket No. 9049  
Amdt. dated 09/13/2005  
Reply to Office Action of 06/13/2005  
Customer No. 27752

### REMARKS

#### Amendments to the Claims

Claims 1-3 are pending in the present application. No additional claims fee is believed to be due.

Claims 1, 2, and 3 have been amended as shown above. Support for these amendments can be found at page 5, lines 4-19 and lines 23-24 of the specification.

Claim 3 also has been amended to correct a typographical error. Support for this amendment can be found in the original claim 3.

It is believed these changes do not involve any introduction of new matter. Consequently, entry of these changes is believed to be in order and is respectfully requested.

#### Claim Objections

Claim 3 is objected to because of a typographical error, namely "first times" is recited instead of "first tines". As shown above, claim 3 has been amended to correct this typographical error.

#### Rejection Under 35 USC 102(b) Over US Patent No. 6,047,703 to Paglericcio et al.

Claim 1 is rejected under 35 USC 102(b) as being anticipated by US Patent No. 6,047,703 to Paglericcio et al. ("Paglericcio"). The Examiner asserts that Paglericcio discloses a hair treatment applicator, as depicted in figure 1 of Paglericcio. Specifically, the Examiner asserts that Paglericcio discloses a hair treatment applicator comprising a handle (12) having a longitudinal axis, a plurality of retaining structures (98) [sic] connected to the handle, wherein each of the plurality of retaining structures is separated from each other by a separation volume (the spaces between one retaining structure to another), wherein each of the plurality of retaining structures is substantially parallel to each other and is substantially perpendicular to the longitudinal axis of the handle, and wherein the plurality of retaining structures hold the hair treatment. Applicants respectfully traverse the present rejection based on the following comments.

Paglericcio does not disclose each and every element of Applicants' claimed hair treatment applicator, and, thus, Paglericcio is not anticipatory. As currently amended,

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claim 1 is directed to a hair treatment applicator which comprises a handle having a longitudinal axis, and a plurality of retaining structures connected to the handle, wherein each of the plurality of retaining structures is separated from each other by a separation volume, wherein each of the plurality of retaining structures is substantially parallel to each other and is substantially perpendicular to the longitudinal axis of the handle, and wherein the plurality of retaining structures hold the hair treatment *such that the hair treatment does not enter the separation volume.*

Applicants' hair treatment applicator enables a user to apply a hair treatment composition simultaneously to a plurality of separate sections of hair while leaving a separate untreated section of hair between the treated sections of hair. In use, sections of hair pass through the retaining structures, which hold the hair treatment, resulting in the hair treatment being applied to these sections of hair. At the same time, because the hair treatment is contained in the retaining volumes such that it does not enter the separation volume, other hair passes through the separation volume, leaving this other hair untreated.

In contrast to the hair treatment applicator of claim 1, the fluid dispensing device of Paglericcio is designed to apply fluids to the hair evenly and uniformly (*i.e.*, not in separate treated and untreated sections). Paglericcio discloses a device which comprises a head (4) defining a hollow compartment (6), a plurality of hollow teeth (8) which are attached to the underside of the head (4), and a handle (12) with one end attached to the head (4). While the device of Paglericcio has a plurality of teeth with space in between each of the teeth, the teeth do not hold the fluid such that the fluid does not enter that space in between each of the teeth. Rather, the teeth of Paglericcio facilitate even distribution on the hair of the fluid which is contained in the hollow compartment of the head. See Paglericcio at column 2, lines 31-34. To achieve this even distribution of the fluid on the hair, the device of Paglericcio allows the fluid to flow out from the teeth into the area in between each of the teeth. In other words, the device of Paglericcio does not comprise retaining structures which hold the hair treatment such that the hair treatment does not enter a separation volume. Thus, Paglericcio fails to disclose each and every element of Applicants' claim 1.

Additionally, Paglericcio does not provide any suggestion or motivation for a fluid dispensing device configured to provide separate treated and untreated sections of hair, as Applicants' claimed hair treatment applicator provides. As stated above, Paglericcio

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specifically teaches that its device is designed to distribute a fluid on the hair in an even manner. Thus, Paglericcio teaches away from a device comprise retaining structures which hold a hair treatment such that the hair treatment does not enter a separation volume.

Accordingly, Applicants' claim 1 is novel and nonobvious over Paglericcio.

Rejection Under 35 USC 103(a) Over US Patent No. 6,453,909 to De Laforcade.

Claims 2 and 3 are rejected under 35 USC 103(a) as being unpatentable over US Patent No. 6,453,909 to De Laforcade ("De Laforcade"). The Examiner asserts that De Laforcade discloses a hair treatment applicator in figures 2a and 3 of De Laforcade. Specifically, the Examiner asserts that De Laforcade discloses a hair treatment applicator comprising a handle (2) having a longitudinal axis, a first head (22) connected to the handle, the first head having a plurality of first tines (5) disposed on the first head and forming a first retaining volume (30), a second head (26) being separate from the first head and being connected to the handle, the second head having a plurality of second tines (5) disposed on the head and forming a second retaining volume (34), wherein the plurality of first and second tines are substantially parallel to each other and are substantially perpendicular to the longitudinal axis of the handle (fig. 2a), a separation volume (surface 20), wherein the first and second retaining volumes are separated by the separation volume and wherein the first and second retaining volumes hold the hair treatment.

The Examiner acknowledges that De Laforcade does not disclose that the plurality of tines of the first and second heads are disposed on a substantially square pattern. However, the Examiner asserts that it would have been obvious to one of ordinary skill in the art at the time the invention was made to construct the plurality of tines in a substantially square pattern because such a modification involves a mere change in shape of the component. Applicants respectfully traverse the present rejection based on the following comments.

De Laforcade does not teach or suggest all of the claim limitations of Applicants' claims 2 and 3, and, therefore, does not establish a *prima facie* case of obviousness. See MPEP 2143.03. As currently amended, Applicants' claim 2 is directed to a hair treatment applicator comprising, *inter alia*, a handle, a plurality of heads connected to the handle,

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and a retaining structure connected to each of the plurality of heads, wherein each of the heads is separated from the other by a separation volume, and wherein the retaining structure holds the hair treatment *such that the hair treatment does not enter the separation volume.*

Similarly, as currently amended, Applicants' claim 3 is directed to a hair treatment applicator comprising, *inter alia*, a handle, a first head and a second head which are connected to the handle, the first and second heads each having a plurality of tines forming respectively first and second retaining volumes, and a separation volume, wherein each of the heads is separated from the other by the separation volume, and wherein the retaining volumes hold the hair treatment *such that the hair treatment does not enter the separation volume.*

As discussed above, Applicants' hair treatment applicator enables a user to apply a hair treatment composition simultaneously to a plurality of separate sections of hair while leaving a separate untreated section of hair between the treated sections of hair. Because the hair treatment is contained in the retaining volumes such that it does not enter the separation volume, the hair passing through the separation volume is left untreated.

In contrast to the hair treatment applicator of Applicants' claims 2 and 3, the applicator of De Laforcade is designed to apply a hair coloring product to the hair in a coloration pattern which is formed of at least two sections of hair which have different degrees of coloration. In other words, the applicator of De Laforcade is not designed to provide separate treated and untreated sections of hair as is Applicants' claimed hair treatment applicator. Indeed, De Laforcade attempts to distinguish over and specifically teaches away from applicators of the type which produce hair section coloration of the "all or nothing" type (*i.e.*, hair sections which are either colored or are not colored at all). See De Laforcade at column 2, line 60 to column 3, line 3.

Consequently, De Laforcade does not teach or suggest an applicator comprising a plurality of retaining volumes and a separation volume, wherein the retaining volumes hold a hair treatment such that the hair treatment does not enter the separation volume. The applicator of De Laforcade has an application face (14) with a stepped profile with at least two discrete levels. The applicator face (14) of De Laforcade is defined by the surface (20), which the Examiner equates to the separation volume of Applicants'

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claimed hair treatment applicator. The edge blocks (22, 26) respectively comprise the faces (30, 34), which the Examiner equates to the retaining volumes of Applicants' claim hair treatment applicator. To use the applicator of De Laforcade, the hair coloring product is deposited on the application face (14), such that the product fills the recessed portions of the applicator face (14) and spills over slightly onto the edge blocks (21-28). See De Laforcade at column 8, lines 31-35. Thus, in the applicator of De Laforcade, the hair coloring product is present in the retaining volumes and in the separation volume. Applicants' claimed hair treatment applicators, conversely, comprise retaining volumes which hold the hair treatment such that the hair treatment does not enter the separation volume.

Accordingly, Applicants' claims 2 and 3 are novel and nonobvious over De Laforcade.

#### CONCLUSION

In light of the amendments and remarks presented herein, it is requested that the Examiner reconsider and withdraw the present rejections. Early and favorable action in the case is respectfully requested.

Applicant has made an earnest effort to place their application in proper form and to distinguish the invention as now claimed from the applied references. In view of the foregoing, Applicant respectfully requests reconsideration of this application and allowance of Claims 1-3.

Respectfully submitted,  
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